

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  AT&T CORPORATION,  Complainant,  v.  QWEST CORPORATION,  Respondent.	DOCKET NO. FCU-02-2
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**ORDER DOCKETING COMPLAINT, ESTABLISHING BRIEFING SCHEDULE,  
AND DENYING MOTION TO DISMISS**

(Issued April 1, 2002)

On February 27, 2002, AT&T Corporation (AT&T) filed with the Utilities Board (Board) a letter alleging that Qwest Corporation (Qwest) may have entered into a series of secret agreements granting preferential treatment to some competitive local exchange carriers (CLECs). AT&T stated that the Minnesota Department of Commerce (Minnesota Department) recently filed a complaint before the Minnesota Public Utilities Commission alleging Qwest has entered into a series of secret agreements with various CLECs to provide preferential treatment for those CLECs; that the agreements were characterized as amendments to existing interconnection agreements; and that Qwest had not filed the agreements with the Minnesota Public Utilities Commission as required by 47 U.S.C. §§ 251(c) and 252(a)-(i). AT&T

alleged that the allegations in Minnesota show there is good cause to believe similar agreements exist in Iowa, requiring a close examination of Qwest's practices.

On March 11, 2002, Qwest filed a letter with the Board intended to provide background information regarding the Minnesota proceedings. Qwest stated it has exercised good faith in deciding when a particular contract arrangement with a CLEC requires a state agency filing. Qwest argued the § 252 mandatory filing requirement may be ambiguous, but negotiations with CLECs to resolve past disputes or define administrative business procedures do not require filing under § 252. Qwest included two attachments with its letter; first, a copy of Qwest's answer to the Minnesota Department complaint and second, copies of the agreements identified by the Minnesota Department that involve CLECs operating in Iowa.

On March 25, 2002, Qwest filed its answer to AT&T's complaint letter and a motion to dismiss. Qwest states its disagreement with AT&T's characterization of the CLEC contracts and argues that the scope of the § 252 filing requirement is an important and novel issue of law and fact for Iowa and all other states. Qwest argues § 252 only requires filing the "core terms of interconnection" and an overbroad reading of the statute would interfere with the ability of parties to reach agreement in areas outside the scope of the statute. Qwest also argues that the agreements identified by the Minnesota Department were not required to be filed pursuant to § 252.

In its motion to dismiss, Qwest argues that AT&T has not offered any facts or law to support the statements in its letter, but instead invites the Board to commence an investigation "in an area in which the law is still developing."

The Board will docket AT&T's complaint letter for investigation. While the issues surrounding the various Qwest-CLEC agreements may ultimately require investigation, the Board believes it would be more efficient to begin this docket by addressing a legal question, *viz*, the scope of the obligation to file interconnection agreements pursuant to federal law. Qwest describes this obligation as ambiguous and an area where the law is still developing, and it appears it would be most efficient to try to reduce the alleged ambiguity and determine the scope of the obligation before trying to determine whether any particular agreement is required to be filed with the Board pursuant to the obligation. Accordingly, the Board will establish a briefing schedule first, to allow consideration of this legal issue, and will consider a more complete procedural schedule at a later date.

The scope of the obligation to file interconnection agreements is best considered in context. The Board anticipates the parties will use the agreements Qwest filed with its letter of March 11, 2002, to illustrate their arguments, along with any other agreements obtained through discovery or already in the possession of a party. To the extent any party relies on an agreement that is not already in the record in this docket, the agreement (or all relevant portions thereof) should be appended to the party's brief.

Finally, in their briefs the parties should address any judicial or administrative decisions, including orders from the FCC and other state regulatory bodies, in which this legal question is considered. If a party discusses or relies upon an unpublished decision or order, a copy (or all relevant portions thereof) should be appended to the party's brief.

**IT IS THEREFORE ORDERED:**

1. The complaint filed on February 27, 2002, by AT&T Corporation against Qwest Corporation is docketed for investigation as Docket No. FCU-02-2.
2. The following procedural schedule is established for this proceeding:
  - a. All parties shall file initial briefs concerning the scope of Qwest's obligation to file interconnection agreements with the Board pursuant to 47 U.S.C. §§ 251(c) and 252 on or before April 18, 2002.
  - b. All parties shall file rebuttal briefs on or before April 26, 2002.
3. Pursuant to 199 IAC 7.7(2) and (11), the time for filing responses or objections to data requests and motions will be shortened to five days from the date the motion is filed or the data request is served. All data requests and motions should be served by facsimile transfer or by electronic mail, in addition to United States mail.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 1<sup>st</sup> day of April, 2002.